

FILED

SEP 04 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Macagno*
DEPUTY CLERK

FRANNY A. FORSMAN, ESQ.
Nevada Bar No. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728
f.forsman@cox.net

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 000886
WRIGHT, STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Counsel for Appellant:
DIPAK KANTILAL DESAI

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIPAK KANTILAL DESAI,)	
)	
Appellant,)	CASE NO. 64591
)	
vs.)	
)	
STATE OF NEVADA,)	
)	
Respondents.)	
)	

MOTION FOR LEAVE TO FILE SEALED DOCUMENT

Appellant Dipak Kantilal Desai by and through his attorneys, Franny A.

Forsman, Law Offices of Franny Forsman PLLC and Richard A. Wright, Wright,

Stanish & Winckler, moves this court for permission to allow the filing of a sealed

RECEIVED
SEP 04 2014
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

14-29331

document which is necessary for inclusion in the Appendix but which should not be made a part of the public record.

The document is a report prepared by the court-appointed medical evaluator, David Palestrant, M.D. and was originally filed, with permission of this court, as a sealed document in support of the Petition for extraordinary relief filed in Appeal No. 63046. This motion is based on the attached Points and Authorities and the Affidavit of Counsel filed in support of the previous Motion to Seal the document.

POINTS AND AUTHORITIES

While there is a presumption in favor of public access to records filed with the court, this court has recognized that there are certain circumstances which would support the sealing of a document filed with this court. Appellant seeks to file the report of a court-appointed medical evaluator who reviewed Appellant's medical history, hospital records, medical testing and other highly personal and otherwise privileged documents. The report was ordered by the court to assist the court in determining whether competency proceedings should be conducted. The court did not conduct a competency inquiry. The lower court did not unseal the report.

This court has inherent authority to seal the document where "the public's right to access is outweighed by competing interests." Howard v. State, 291 P. 3d

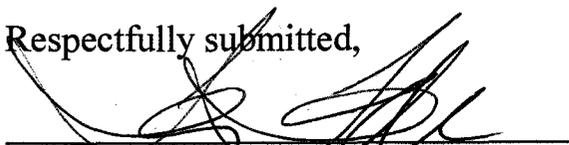
137, 141 (Nev. 2012).

Here, the public's right of access is outweighed by Appellant's privacy concerns. The information contained in the report contains numerous references to personal information with regard to hospitalizations, medical care, test results, occurring over years of medical treatment. Competency proceedings were never commenced based on the document. Public access to the document is not necessary for a public understanding of the issues presented in the appeal as pertinent parts of the document are referenced and quoted in Appellant's Brief.

Accordingly, Appellant requests that this court accept the report under seal as it did in Appeal No. 63046.

Dated this 2nd day of September, 2014.

Respectfully submitted,



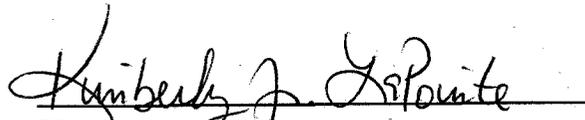
Franny A. Forsman, Esq.
Attorney for *Dipak Kantilal Desai*

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Motion for Leave to
File a Sealed Document by placing said document in the United States Mail on the
2nd day of September, 2014, to the following address:

Steven S. Owens
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez-Masto, Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701


Kimberly LaPointe

1 report, the request to stay the trial for competency proceedings was denied. The
2 district court concluded that the stroke was minor and accommodations could be
3 made for Desai's speech difficulties. The district court did not make the IME report
4 a matter of public record at this juncture. Since the document contained private
5 health care information and no competency evaluation was ordered, it was
6 appropriate for the district court to maintain the confidentiality of the document.
7 The IME report should remain confidential until such time that the district court
8 decides to further review the matter. See, Howard v. State, 128 Nev. Adv. Op. 67,
9 291 P.3d 137 (2012).

10 5. Based on the foregoing, Petitioner request that the Court authorize the
11 filing of the IME report under seal. It is attached as Exhibit 3 to the Petition for
12 Writ of Mandamus to Compel Determination Or, Alternatively, An Evidentiary
13 Hearing on the Existence of Doubt as to Competency, which is filed simultaneously
14 with this motion

15 I declare under penalty of perjury that the foregoing is true and correct. (NRS
16 53.045).

17 
18 MARGARET M. STANISH

19
20 SUBSCRIBED and SWORN to before me on
21 this 22d day of April 2013 in said State and County.

22 
23 NOTARY PUBLIC

24
25
26
27
28